

## HOUSE BILL NO. 51

INTRODUCED BY A. OLSON

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DEFINITION OF "CUMULATIVE IMPACTS" AS IT RELATES TO CONSIDERATION OF FUTURE ACTIONS UNDER THE MONTANA ENVIRONMENTAL POLICY ACT; AMENDING SECTIONS 75-1-208 AND 75-1-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 75-1-208, MCA, is amended to read:

**"75-1-208. Environmental review procedure.** (1) (a) Except as provided in subsection (1)(b), an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

(2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental

1 review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are  
2 provided by law. All time limits are measured from the date the agency receives a complete application. An  
3 agency has:

4 (i) 60 days to complete a public scoping process, if any;

5 (ii) 90 days to complete an environmental review unless a detailed statement pursuant to  
6 75-1-201(1)(b)(iv) is required; and

7 (iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

8 (b) The period of time between the request for a review by a board and the completion of a review by  
9 a board under 75-1-201(1)(b)(iv)(C)(III) or (8) or subsection (10) of this section may not be included for the  
10 purposes of determining compliance with the time limits established for conducting an environmental review  
11 under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-10-922, 75-20-216,  
12 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

13 (5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing  
14 that an extension is necessary and stating the basis for the extension. The agency may extend the time limit one  
15 time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one  
16 extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree  
17 to the extension.

18 (6) If the project sponsor disagrees with the need for the extension, the project sponsor may request  
19 that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The  
20 appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

21 (7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental  
22 review by the expiration of the original or extended time period, the agency may not withhold a permit or other  
23 authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other  
24 approval to act would result in the violation of a statutory or regulatory requirement.

25 (b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82,  
26 chapter 4, parts 1 and 2.

27 (8) Under this part, an agency may ~~only~~ request only that information from the project sponsor that is  
28 relevant to the environmental review required under this part.

29 (9) An agency shall ensure that the notification for any public scoping process associated with an  
30 environmental review conducted by the agency is presented in an objective and neutral manner and that the

1 notification does not speculate on the potential impacts of the project.

2 (10) An agency may not require the project sponsor to provide engineering designs in greater detail than  
3 that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate  
4 board, if any, review an agency's request regarding the level of design detail information that the agency  
5 believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit  
6 an advisory recommendation to the agency regarding the issue.

7 (11) An agency shall, when appropriate, consider the cumulative impacts of a proposed project.  
8 However, related future actions may ~~only~~ be considered only when these actions are under concurrent  
9 consideration by ~~any a state~~ agency through ~~preimpact statement studies~~, separate impact statement  
10 evaluations; or permit processing procedures."

11

12 **Section 2.** Section 75-1-220, MCA, is amended to read:

13 **"75-1-220. Definitions.** For the purposes of this part, the following definitions apply:

14 (1) "Appropriate board" means, for administrative actions taken under this part by the:

15 (a) department of environmental quality, the board of environmental review, as provided for in  
16 2-15-3502;

17 (b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided for in  
18 2-15-3402;

19 (c) department of transportation, the transportation commission, as provided for in 2-15-2502;

20 (d) department of natural resources and conservation for state trust land issues, the board of land  
21 commissioners, as provided for in Article X, section 4, of the Montana constitution;

22 (e) department of natural resources and conservation for oil and gas issues, the board of oil and gas  
23 conservation, as provided for in 2-15-3303; and

24 (f) department of livestock, the board of livestock, as provided for in 2-15-3102.

25 (2) "Complete application" means, for the purpose of complying with this part, an application for a  
26 permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and  
27 signatures required to be included with the application sufficient for the agency to approve the application under  
28 the applicable statutes and rules.

29 (3) "Cumulative impacts" means the collective impacts on the human environment of the proposed  
30 action when considered in conjunction with other past, and present, ~~and future~~ actions related to the proposed

1 action by location or generic type. Related future actions must also be considered when these actions are under  
2 concurrent consideration by a state agency through separate impact statement evaluation or permit processing  
3 procedures.

4 (4) "Environmental review" means any environmental assessment, environmental impact statement,  
5 or other written analysis required under this part by a state agency of a proposed action to determine, examine,  
6 or document the effects and impacts of the proposed action on the quality of the human and physical  
7 environment as required under this part.

8 (5) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing  
9 an action that requires an environmental review. If the action involves state agency-initiated actions on state trust  
10 lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of  
11 congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through  
12 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328).

13 (6) "Public scoping process" means any process to determine the scope of an environmental review."  
14

15 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

16 - END -